

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE P. ZATKOFF

TCG DETROIT, a New York
general partnership,
Plaintiff,

96-74338

Civil Action No. _____

v.

Hon. Magistrate Judge William J. Carlson

CITY OF DEARBORN,
Defendant.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, DAMAGES, AND OTHER RELIEF

JURISDICTION AND VENUE

1. This action arises under the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.), in particular 47 U.S.C. § 253, as more fully appears below. This Court has jurisdiction of the claims stated in Counts I, II, III, and V of this complaint pursuant to 28 U.S.C. §§ 1331, 1337(a), 1343 and 2201, as an action arising under an Act of Congress regulating commerce, and seeking declaratory relief. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the sole defendant resides in this District, because a substantial part of the events giving rise to the claim occurred in this District, and because a substantial part of the property that is the subject of this action is situated in this District.

47. TCG Detroit's major competitor for local telecommunication services is the incumbent local telecommunications company, Michigan Bell¹⁰, which because of its former monopoly status still has virtually 100% of the local telecommunications business in Dearborn.

48. Michigan Bell received its license to provide basic local exchange telecommunications service in parts of Michigan, including Dearborn, under the Michigan Telecommunications Act on August 14, 1992.¹¹

49. Dearborn has not applied its Regulatory Ordinance against Michigan Bell, TCG Detroit's major competitor, and the dominant local telecommunication's provider in Dearborn. It does not charge the dominant provider the "franchise fees" it demands of TCG Detroit. It does not demand a "franchise" or a "franchise agreement" under its Regulatory Ordinance from Michigan Bell as it demands of TCG Detroit. Nonetheless, TCG Detroit's major competitor and the dominant provider continues to operate freely in Dearborn without restriction, without local franchise regulation, and without payment of franchise fees, while TCG Detroit's efforts to compete in Dearborn are substantially restricted.

50. Dearborn's actions are contrary to and in violation of the Federal Telecommunications Act of 1996, and in particular 47 U.S.C. § 253(c).

¹⁰ Michigan Bell Telecommunications Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan," pursuant to assumed name filings with the state of Michigan.

¹¹ See Re New Licenses, MPSC Case No. U-10054, Opinion and Order issued August 14, 1992.



AFFAIRSS TEL:5173350118

Sep 10 96 14:56 No.005 P.02

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

August 19, 1996

The Honorable William M. Oakley
Mayor of Romulus
Administrative and Legislative Offices
11111 Wayne Road
Romulus, Michigan 48174

Dear Mayor Oakley:

I appreciate your letter of last month urging my support for efforts to change the Federal Communications Commission's (FCC) recently proposed rules on the utilization of public rights-of-way. While I certainly support state control over intrastate telecommunications issues, I am troubled by the recent discriminatory actions taken by some municipalities in Michigan. I believe communities ought to be looking for ways to attract new telecommunications companies. Instead, some are trying to circumvent Michigan law and assess illegal franchise fees. Actions taken by the City of Troy, for example, discourage investments in Michigan communities, depriving citizens of competitively priced telecommunications services.

As you know, the Michigan Telecommunications Act (MTA) prohibits local municipalities from charging excessive fees for use of the public right-of-way. For companies providing telecommunications services, fees can only be recovered to offset the cost of maintaining and overseeing the right-of-way. Fees that tax revenues from telecommunications services beyond these costs are prohibited. Some municipalities have chosen to disregard this prohibition and could face possible enforcement penalties as outlined in the MTA.

While the courts may have to decide whether certain sections of the MTA are constitutional, it is clear that federal law would supersede any state constitutional protection in this case. The FCC is working to ensure that all new

09/23/96

13:20

517 482 1819

MI CABLE TV ASSO --- MARVIN

003/003

AFFAIRSS

TEL:5173350118

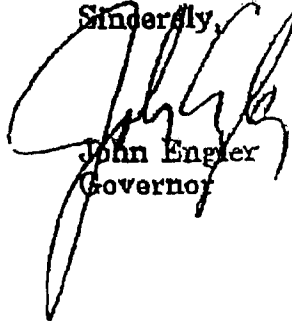
Sep 10 96

14:57 No.005 P.03

The Honorable William M. Oakley
Page Two
August 19, 1996

entrants in the telecommunications arena have a level playing field when entering the market. Our state law provides for such protection and I would prefer that we control rules and regulations on this point. However, I cannot support those municipalities who would like to get out from both state and federal guidelines in this instance.

Sincerely,



John Engler
Governor

JE:rlf

cc: Chairman Strand
Commissioner Svanda
Commissioner Shea

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

- o Microfilm, microform, certain photographs or videotape.

- o Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

Ruskette